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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
09/900,359	07/06/2001	Michael John Faulks	14,676.14	7546		
23556	7590	11/17/2004	<table border="1"><tr><td>EXAMINER</td></tr><tr><td>GOODMAN, CHARLES</td></tr></table>		EXAMINER	GOODMAN, CHARLES
EXAMINER						
GOODMAN, CHARLES						
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			ART UNIT	PAPER NUMBER		
3724						

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/900,359	FAULKS ET AL.	
	<b>Examiner</b> Charles Goodman	<b>Art Unit</b> 3724	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

#### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 23 July 2004.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-28 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-28 and 38-40 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 July 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The Amendment filed on 7/23/2004 has been entered.
2. The drawings were received on 7/23/2004. These drawings are approved.

#### ***Specification***

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - a. Claim 15 is vague and indefinite in that it is not clear what the claim encompasses. If the space is 0 mm, then there is no space in which the wipes may pass. Thus, what is the claim referring to? Applicant's response to this issue is noted. While it may be understood the elastic nature of the orifice allows the dispensing action of the wet wipes, 0 mm means that there is no space. Perhaps it would be best if the claim clarifies how the 0 mm "spacing" is flexed via some

action to allow passage of the wet wipes, e.g. "space about 0 mm which is flexed to allow dispensing of the wipes" or similar.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-28 and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chasid.

Chasid discloses the invention substantially as claimed except that Chasid is silent as to the drag relationship between the sealing orifice (56) and the wet wipes (34). However, since the wipes are wet and the self sealing orifice is not, there inherently exists a reduction in drag between the two versus a dispenser using a dry wipe. To what

extent, e.g. at least about 20%, it would appear that this is facilitated by many factors, e.g., the moisture content, the material of the wipes and/or the orifice, or the dimensions of the orifice. In that regard, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Chasid with an orifice dimension, moisture content, and/or the material of either the orifice or the wipes in order to facilitate a desired amount of reduction in moisture to the dispensed wipes, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, *In re Leshin*, 125 USPQ 416, (the above reasoning applies equally with the claimed silicon (claim 39), since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art, *In re Aller*, 105 USPQ 233, and since such a modification would have involved a mere change in the size or shape of a component. A change in size or shape is generally recognized as being within the level of ordinary skill in the art, especially since such a change does not render unexpected or unobvious results. *In re Rose*, 105 USPQ 237 (CCPA 1955). It is noted that one of the “flaps” is construed as a “blade” with respect to claim 38.

Regarding claims 5 and 16, the modified device of Chasid discloses the invention substantially as claimed except it is not clear whether the wipes are in a roll form or not. However, rolled or stacked form of the wipes are well known equivalents in the art and the Examiner takes Official Notice to that effect.

Regarding claims 10-15, it appears that the Chasid includes the space as claimed. However, since Chasid lacks a written disclosure thereto, it would have been obvious to

the ordinary artisan at the time of the instant invention to provide the modified device of Chasid with the space as claimed in order to facilitate the desired gap dimension for wiping the wet wipes, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art, especially since such a change does not render unexpected or unobvious results. *In re Rose*, 105 USPQ 237 (CCPA 1955).

### ***Response to Arguments***

9. Applicant's arguments filed 7/23/04 have been fully considered but they are not persuasive.

In response to Applicant's basic argument that Chasid does not render the claims obvious because of the allegation that the wet wipes of Chasid are limited to water and thus not a lubricant as claimed, this argument is traversed. First, even though water alone is a wetting material, it is obvious to one of ordinary skill in the art that water also inherently performs a lubricating function. For example, if a tiled floor was covered with water and someone steps on the wetted surface in a careless manner, this person would slip. A non-watered floor would not tend to be slippery to the extent that there is more friction between the shoes and the floor. Second, the teachings of Chasid are not limited to water. As noted in c. 1, ll. 13-24, "wet tissues" denotes liquid chemical agents such as lotion, perfume, cleaning agents, etc. At the very least "lotion" would be considered a lubricant.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Goodman whose telephone number is (703) 308-0501. The examiner can normally be reached on Monday-Thursday between 7:30 AM to 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap, can be reached on (703) 308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to (703) 872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-1148.



**Charles Goodman**  
**Primary Examiner**  
**AU 3724**

cg  
November 14, 2004



**CHARLES GOODMAN**  
**PRIMARY EXAMINER**